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UNITED STATES OF AMERICA)	
)	
v.)	CR No. 16-011-M
)	
JASON D. BOUDREAU,)	
Defendant.)	
)	

The Court resumes this diptych of motions to suppress where it left off at the end of part one. ECF No. 40.

Following the discovery of child pornography on Jason Boudreau's cell phone, the Department of Homeland Security sought and obtained a warrant for Mr. Boudreau's arrest. The next day, agents unsuccessfully tried to execute the arrest warrant at Mr. Boudreau's residence. What followed was a series of unsuccessful attempts by the agents to gain contact with Mr. Boudreau. Ultimately, the agents returned to Mr. Boudreau's residence and learned that he had sent a string of suicidal texts to his roommate. The roommate allowed the agents to review the texts on the roommate's phone, which included, for example, references to imminent death: "All my problems end. This lonely miserable life ends. Years of prison is worse than death." And other texts depicted Mr. Boudreau's bleak outlook on life: "I'm better off in the ground." In addition to the texts to his roommate, the agents

learned that Mr. Boudreau also supposedly contacted his ex-wife, who said that Mr. Boudreau may be a danger to himself.¹

As the concern for Mr. Boudreau's well-being grew, a Rhode Island State Police detective submitted a GPS/Ping Emergency Request to Sprint, depicting Mr. Boudreau's suicide risk. Through the use of the GPS ping, the agents successfully located Mr. Boudreau at a bar in Branford, Connecticut. Upon locating Mr. Boudreau, the agents, along with local police, arrested Mr. Boudreau and seized his cell phone. That cell phone contained evidence of child pornography.

Two accounts of the arrest, however, have surfaced, differing in only one material way. For his part, Mr. Boudreau claims that the agents searched his cell phone when they arrested him. The agents, on the other hand, maintain that they merely seized his cell phone and did not conduct a search. Both agents have submitted affidavits to that effect, but Mr. Boudreau has only asserted this allegation in his brief.

Mr. Boudreau asserts two grounds for suppression: (1) the warrantless pinging of his cell phone and (2) the warrantless search of his cell phone.

The Court begins with the warrantless ping of Mr. Boudreau's cell phone. Both Mr. Boudreau and the government extensively briefed the issue of whether an individual has Fourth Amendment rights to cell site location information. The

¹ The contents—or for that matter existence—of these conversations are unknown because the government has not entered them into evidence.

Court does not, however, need to resort to settling this dispute because these facts present a clear case of exigent circumstances—namely, the emergency aid doctrine.²

It is, of course, anyone's guess whether Mr. Boudreau actually intended to commit suicide, but that is not the point and thankfully not the inquiry. Instead, the Court asks whether "there is [a] reasonable belief that 'swift action is required to safeguard life or prevent serious harm.'" *United States v. Infante*, 701 F.3d 386, 392 (1st Cir. 2012) (quoting *United States v. Martins*, 413 F.3d 139, 147 (1st Cir. 2005)). Here, the facts are replete with evidence approximating probable cause.

Mr. Boudreau was convicted previously of second degree molestation and possession of child pornography and was on probation. Following the search of Mr. Boudreau's residence, authorities discovered child pornography on his digital media. Mr. Boudreau knew of this—that is, that his arrest was impending—and sent a slew of suicidal texts to his roommate. In these texts, Mr. Boudreau remarked, "This lonely miserable life ends," after his roommate pleaded with him, saying that he cannot let his friends die. Furthermore, Mr. Boudreau acknowledged that prison was impending and despairingly wrote that "prison is worse than death." In short, Mr. Boudreau's life altering position coupled with his flurry of texts supplied probable cause in spades. When an individual facing arrest on child pornography charges sends texts alluding to suicide, those messages—though they may be a cry for help, a serious threat, or just blowing off steam—should be treated

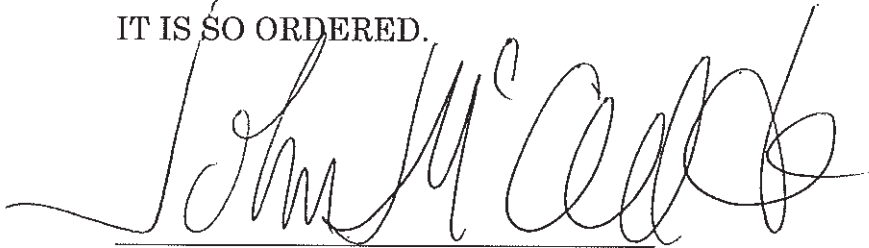
² For purposes of this motion, the Court assumes, without deciding, that the GPS ping of Mr. Boudreau's cell phone implicated full-fledged Fourth Amendment rights.

as serious threats. Therefore, the agents were presented with exigent circumstances justifying the GPS ping: ensuring Mr. Boudreau's safety.

With the GPS ping out of the way, the only remaining basis for suppression is the supposed warrantless search of Mr. Boudreau's cell phone. On this point, the Court need not venture into the law, as Mr. Boudreau's argument suffers a fatal factual flaw. That flaw is that no warrantless search of Mr. Boudreau's cell phone occurred, or at least nothing in the record gives the Court cause to believe that one occurred. The two agents that seized Mr. Boudreau's cell phone during his arrest submitted affidavits declaring that they seized the cell phone but did not search it. Afterwards, a search warrant was, in fact, obtained for the cell phone. Mr. Boudreau has not provided any support to counteract the government's evidence. Accordingly, the Court finds that a warrantless search did not occur.

For the reasons stated herein, Mr. Boudreau's Motion to Suppress (ECF No. 43) is DENIED.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "John J. McConnell, Jr.", written over a horizontal line.

John J. McConnell, Jr.
United States District Judge

Date: July 27, 2017